

CHAPTER 229

INSURANCE

HOUSE BILL 20-1290

BY REPRESENTATIVE(S) Garnett, Hooton;
also SENATOR(S) Fenberg, Moreno, Pettersen.

AN ACT

CONCERNING THE ABILITY OF AN INSURER TO USE A FAILURE-TO-COOPERATE DEFENSE IN AN ACTION IN WHICH THE INSURED HAS MADE A CLAIM UNDER INSURANCE COVERAGE FOR AN INCIDENT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 10-3-1118 as follows:

10-3-1118. Failure-to-cooperate defense. (1) TO PLEAD OR PROVE A FAILURE-TO-COOPERATE DEFENSE IN AN ACTION CONCERNING AN INSURANCE POLICY PROVIDING FIRST-PARTY BENEFITS OR COVERAGE, EACH OF THE FOLLOWING CONDITIONS MUST BE MET BEFORE THE DEFENSE IS ASSERTED IN A COURT OF LAW OR AN ARBITRATION:

(a) THE INSURER HAS SUBMITTED A WRITTEN REQUEST TO THE INSURED OR THE INSURED'S REPRESENTATIVE FOR THE INFORMATION THE INSURER SEEKS VIA:

(I) ELECTRONIC MEANS IF THE INSURED OR THE INSURED'S REPRESENTATIVE HAS CONSENTED TO RECEIVE ELECTRONIC DOCUMENTS FROM THE INSURER; OR

(II) CERTIFIED MAIL;

(b) THE INFORMATION IS NOT AVAILABLE TO THE INSURER WITHOUT THE ASSISTANCE OF THE INSURED;

(c) THE WRITTEN REQUEST PROVIDES THE INSURED SIXTY DAYS TO RESPOND;

(d) THE WRITTEN REQUEST IS FOR INFORMATION A REASONABLE PERSON WOULD DETERMINE THE INSURER NEEDS TO ADJUST THE CLAIM FILED BY THE INSURED OR TO

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

PREVENT FRAUD; AND

(e) THE INSURER GIVES THE INSURED AN OPPORTUNITY TO CURE, WHICH MUST:

(I) INCLUDE THE FURNISHING OF WRITTEN NOTICE TO THE INSURED OF THE ALLEGED FAILURE TO COOPERATE, DESCRIBING WITH PARTICULARITY THE ALLEGED FAILURE, WITHIN SIXTY DAYS AFTER THE ALLEGED FAILURE; AND

(II) ALLOW THE INSURED SIXTY DAYS AFTER RECEIPT OF THE WRITTEN NOTICE TO CURE THE ALLEGED FAILURE TO COOPERATE.

(2) A FAILURE-TO-COOPERATE DEFENSE ACTS AS A DEFENSE TO THE PORTION OF THE CLAIM MATERIALLY AND SUBSTANTIALLY PREJUDICED TO THE EXTENT THE INSURER COULD NOT EVALUATE OR PAY THAT PORTION OF THE CLAIM.

(3) THE EXISTENCE OF A DUTY TO COOPERATE IN A POLICY DOES NOT RELIEVE THE INSURER OF ITS DUTY TO INVESTIGATE OR TO COMPLY WITH SECTION 10-3-1104.

(4) ANY LANGUAGE IN A FIRST-PARTY POLICY THAT CONFLICTS WITH THIS SECTION IS VOID AS AGAINST THE PUBLIC POLICY OF COLORADO.

(5) AN INSURER IS NOT LIABLE FOR A CLAIM IN A CIVIL ACTION BASED UPON A BAD-FAITH BREACH OF CONTRACT UNDER COMMON LAW OR UNDER SECTIONS 10-3-1115 AND 10-3-1116 BECAUSE THE INSURER SOLELY PROVIDES THE INSURED WITH THE REQUIRED AMOUNT OF TIME:

(a) TO RESPOND TO THE INSURER'S WRITTEN REQUEST AS SPECIFIED UNDER SUBSECTION (1)(c) OF THIS SECTION; AND

(b) TO CURE THE ALLEGED FAILURE TO COOPERATE AS SPECIFIED UNDER SUBSECTION (1)(e) OF THIS SECTION.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to litigation that occurs on or after the applicable effective date of this act.

Approved: July 2, 2020